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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

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Attorneys for Plaintiff

MIRAMAR CONSTRUCTION, INC.

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MIRAMAR CONSTRUCTION, INC., a
California corporation,

Plaintiff,

vs.

UNITED STATES DEPARTMENT OF
JUSTICE and MICHAEL B. MUKASEY,
in his official capacity as Attorney
General,

Defendants.

Case No.

CV08-01518 GW (FFMx)

**COMPLAINT FOR INJUNCTIVE
RELIEF**

Plaintiff Miramar Construction, Inc. ("Miramar") complains and alleges as follows:

Jurisdiction And Venue

1. Jurisdiction over this action is conferred by 5 U.S.C § 552(a)(4)(A)(vii), 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. § 1331, and 5 U.S.C. §§ 701-706.

2. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B).

1 **Parties**

2 3. Plaintiff Miramar is a construction company incorporated in the State of
3 California. Miramar's principal place of business is Pomona, California, and at all
4 times herein alleged it was qualified to do business in the State of California.

5 4. Defendant Department of Justice is a Department of the Executive Branch
6 of the United States government. Defendant Michael B. Mukasey is the Attorney
7 General of the Department of Justice. The Department of Justice and Michael B.
8 Mukasey are collectively referred to hereafter as "Defendants." The Federal Bureau of
9 Prisons ("FBOP") is an agency of the Department of Justice.

10 **Preliminary Statement**

11 5. This is an action under the Freedom of Information Act ("FOIA"), 5
12 U.S.C. § 552, for injunctive and other appropriate relief, seeking the immediate
13 processing and release of agency records request by plaintiff Miramar Construction,
14 Inc. ("Miramar") from the FBOP which is under the direction and control of the
15 Defendants.

16 6. On August 7, 2007, Miramar submitted a FOIA request (the "Initial
17 Request") to the FBOP seeking records concerning the FCI Terminal Island Sanitary
18 Sewer and Storm Drain Replacement Project (the "Project"). Between 2004 and 2007,
19 Miramar, pursuant to a written subcontract, performed construction activities at FCI
20 Terminal Island in Los Angeles, California. Miramar requested the FBOP records
21 related to the Project to provide evidence in support of Miramar's lawsuits filed against
22 Cal. Inc., the general contractor on the Project, and Unites States Fidelity and Guaranty
23 Company, Cal Inc.'s Miller Act Payment Bond Surety.

24 7. Miramar is entitled to the records they seek. Although almost seven
25 months have passed since the Initial Request, to date no records have been produced
26 nor will the FBOP or the Defendants provide a date by which the records will be
27 produced. The FBOP and the Defendants have no legal basis for refusing to respond
28 to Plaintiff's FOIA request in a timely fashion.

1 8. Miramar seeks an injunction requiring the Defendants to process the
2 Initial Request and to release the requested records.

3 **Plaintiff's FOIA Request**

4 **August 2007 Initial Request**

5 9. On August 7, 2007, pursuant to and in compliance with the Department of
6 Justice Freedom of Information Act Reference Guide dated May 2006, Miramar
7 submitted the Initial Request to the FBOP FOIA/PA section chief. The Initial Request
8 sought the release of 21 categories of documents related to the Project that were
9 relevant to causes of action that Miramar intended to pursue against the general
10 contractor and its Miller Act surety.

11 10. Between August 7, 2007 and November 27, 2007, Miramar made
12 repeated calls to the FBOP FOIA point of contact, Ruth Lee Gowins, inquiring about
13 the status of Miramar's FOIA request. During these telephone conferences, Miramar
14 offered, at its own expense, to travel to the local office where the documents are
15 located to review and copy the documents on site. Miramar further offered, again at its
16 own expense, to travel to the Washington, D.C. offices of the FBOP and review and
17 copy any responsive documents. At no time during this period did the FBOP make the
18 requested documents available nor indicate any reason for withholding disclosure of
19 such documents nor offer any written response to the Initial Request as mandated by
20 the FOIA and Department of Justice regulations.

21 **FBOP's Initial Response and Miramar's Offer To Accommodate**

22 11. After more than 3½ months elapsed since the Initial Request, the FBOP sent
23 an initial response letter, dated November 19, 2007 stating that the FBOP estimated
24 that it had approximately 9,000 pages of documents that were responsive to the Initial
25 Request and demanded that Miramar pay \$4,200 in advance for reproduction and
26 review of the Project documents.

27 ///

28 ///

1 12. Miramar contacted the FBOP between November 27, 2007 and December
2 27, 2007 in an attempt to minimize the FBOP cost and manpower involved in
3 producing documents but the FBOP refused to make any adjustments to its estimate.

4 13. In an effort to obtain the most important Project files as soon as possible
5 and minimize the FBOP manpower involved in the responding to the Initial Request,
6 Miramar significantly narrowed the scope of its request. On December 27, 2007,
7 Miramar transmitted a letter to the FBOP reducing the number of requested document
8 categories from 21 to only five. Miramar also enclosed a check for the entire \$4,200
9 initial FBOP estimated cost.

10 14. Although the FBOP verbally acknowledged receipt of Miramar's reduced
11 FOIA request and \$4,200 payment, the FBOP refused to provide any estimate of when
12 the documents would be produced. In addition, contrary to the FBOP's previous
13 assertions, the responsive Project documents were not ordered to be shipped from the
14 local office to Washington, D.C. until January 8, 2008. Further inquiries to the FBOP
15 regarding the status of Miramar's FOIA request during January 2008 went
16 unanswered.

17 **Miramar's Administrative Appeal**

18 15. On January 29, 2008, Miramar submitted an administrative appeal
19 regarding its FOIA request to the Office of Information and Privacy of the Department
20 of Justice ("OIP/DOJ"), in accordance with the procedures set forth in the Department
21 of Justice FOIA Reference Guide dated May 2006. The administrative appeal with all
22 exhibits is attached hereto as Exhibit 1. The administrative appeal carefully detailed
23 the FBOP's failure to comply with the FOIA and requested that the Department of
24 Justice direct the FBOP to immediately release all 21 categories of requested
25 documents.

26 16. On February 1, 2008, the OIP/DOJ issued a letter acknowledging receipt
27 of the administrative appeal. The letter affirmed that the OIP/DOJ is responsible for
28

1 adjudicating administrative appeals regarding FOIA requests submitted to the FBOP.
 2 A copy of this letter is attached hereto as Exhibit 2.

3 17. On February 28, 2008, exactly 20 business days after OIP/DOJ received
 4 Miramar's administrative appeal, OIP/DOJ informed Miramar that the OIP/DOJ had
 5 requested background information from the FBOP and expected to receive the
 6 information within the next few weeks. OIP/DOJ further informed Miramar that an
 7 OIP/DOJ attorney would be assigned to handle the administrative appeal when the
 8 information was received. OIP/DOJ could provide no further information on when
 9 either the administrative appeal or the underlying FOIA request would be completed.

10 18. As of the date of this complaint, almost seven months have elapsed since
 11 the date of Miramar's Initial Request. Additionally, the 20 business day period for the
 12 Department of Justice to respond to Miramar's administrative appeal has already
 13 lapsed. To date, neither the FBOP nor the OIP/DOJ has produced a single responsive
 14 document nor have either provided any indication as to when Miramar's FOIA request
 15 will be completed.

16 19. Miramar is currently scheduled to commence trial against the general
 17 contractor for the Project on March 25, 2008 (*Miramar Construction, Inc. v. Cal Inc.*,
 18 Los Angeles Superior Court Case No. BC370291, Hon. John S. Wiley) and, therefore,
 19 requires the documents contained in the Initial Request as soon as possible.
 20 Additionally, Miramar may require the same documents in the pending Miller Act
 21 action (*Miramar Construction Inc. v. United States Fidelity and Guaranty Company*,
 22 Central District of California Case No. 2:07-cv-06471-GAF-AGR), which is currently
 23 stayed pending resolution of the state action.

24 **CAUSES OF ACTION**

25 **First Cause of Action**

26 **(Violation of the FOIA for Failure to Timely Respond to Plaintiff's Request)**

27 20. Paragraphs 1 through 19 are incorporated herein by reference.

28 ///

21. Defendants' failure to timely respond to Miramar's request violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and corresponding regulations. Miramar has repeatedly contacted FBOP and Department of Justice personnel with reasonable offers of accommodation to facilitate the timely response and production of Project documents but, to date, the Defendants failed to provide a response complying with the spirit and letter of the FOIA.

22. Miramar may be irreparably harmed by the Defendants' failure to comply with the time requirements of the FOIA if Miramar is required to proceed with either or both of its pending lawsuits without the Project documents in the custody of the Defendants. Such harm is entirely due to the FBOP and Defendants' failure to timely comply with the requirements of the FOIA and/or to cooperate with reasonable accommodations offered by Miramar for production of the requested documents.

Second Cause of Action

(Violation of the FOIA for Failure to Promptly Make Available the Records Sought by Miramar's Request)

23. Paragraphs 1 through 19 are incorporated herein by reference.

24. Defendant's failure to promptly make available the records sought by plaintiff's request violates the FOIA, 5 U.S.C. § 552(a)(3)(A), and corresponding DOJ regulations. Miramar has repeatedly contacted FBOP and Department of Justice personnel with reasonable offers of accommodation to facilitate the timely response and production of Project documents but, to date, the Defendants failed to provide a response complying with the spirit and letter of the FOIA.

25. Miramar may be irreparably harmed by the Defendants' failure to comply with the time requirements of the FOIA if Miramar is required to proceed with either or both of its pending lawsuits without the Project documents in the custody of the Defendants. Such harm is entirely due to the FBOP and Defendants' failure to timely comply with the requirements of the FOIA and/or to cooperate with reasonable accommodations offered by Miramar for production of the requested documents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Miramar Construction, Inc. prays that this Court:

1. Order Defendants to expeditiously process all requested documents;
2. Order Defendants to immediately release all requested Project documents in their entireties and to make it possible for Plaintiff to make copies
3. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
4. Grant such other relief as the Court may deem just and proper.

KIRKPATRICK & LOCKHART
PRESTON GATES ELLIS LLP

Dated: March 4, 2008

By:



Timothy L. Pierce
R. Michael Viayra Jr.
Eric A. Bevan
Attorneys for Plaintiff
MIRAMAR CONSTRUCTION, INC.

EXHIBIT 1

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January 29, 2008

R. Michael Viayra Jr.
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michael.viayra@klgates.com

VIA MESSENGER

Office of Information and Privacy
U.S. Department of Justice
Suite 11050
1425 New York Avenue, N.W.
Washington, D.C. 20530-0001

Re: ***Freedom of Information Act Appeal- FBOP Request No. 2007-09057***

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA") and in accordance with the Department of Justice Freedom of Information Act Reference Guide dated May 2006, I submit this administrative appeal and request that non-exempt FOIA documents requested from the Federal Bureau of Prisons ("FBOP") nearly six months ago be immediately released. We have provided the FBOP numerous reasonable options to comply with our request; however, to date, the FBOP has refused to provide a single document or even provide a timeframe in which the documents will be provided to us. The documents have been requested to assist with an upcoming trial in the Los Angeles Superior Court and because of the extensive delay since the request was first made, we request the immediate release of all responsive documents.

FBOP PROJECT INFORMATION AND PENDING LITIGATION

Documents were initially requested nearly six months ago from the FBOP related to the following construction project:

FCI Terminal Island Sanitary Sewer and Storm Drain Replacement Project (the "Project")
Contract # GS-10F-0013K
Task Order #DJBTRM4PZ230013
Contract Date: 8/10/2004 (Modifications 1-5 dated 7/7/2005)
General Contractor: Cal, Inc., a California corporation

Cal, Inc. contracted with the FBOP for the Project and in turn Cal, Inc. subcontracted with Miramar Construction, Inc. for various portions of the Project. Currently, my law firm represents Miramar Construction, Inc. in the following two lawsuits against Cal, Inc. and its Miller Act Payment Bond Surety related to the Project.

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Page 2

Miramar Construction, Inc. v. Cal, Inc. et al, Los Angeles Superior Court Case No. BC370291- trial date March 25, 2008.

United States of America, for the use and benefit of Miramar Construction, Inc. v. United States Fidelity and Guaranty Company, Central District of California Case No. 2:07-cv-06471-GAF-AGR.

The FBOP is not a party to either action. Because of the rapidly approaching trial date in the California state action, we cannot wait indefinitely for the FBOP to produce the requested documents and, therefore, request they be made available immediately.

HISTORY OF ATTEMPTS TO OBTAIN DOCUMENTS

On August 7, 2007, I transmitted a FOIA request listing 21 specific categories of Project documents to the FBOP FOIA/PA section chief as required by the Department of Justice Freedom of Information Act Reference Guide dated May 2006. A copy of the letter is attached as Exhibit A. Between August 7, 2007 and November 26, 2007¹, Angelina Rothwell, a paralegal employed by my firm, spoke with or left voice messages for various FBOP employees who work for the FBOP FOIA/PA section including Ruth Lee Gowins, Iesha Ogburn, and Wanda Hunt (the FBOP FOIA/PA section chief.) After a few conversations, we were informed that Ruth Lee Gowins would be our point of contact for our FOIA request. During these frequent telephone voicemails and conversations, our firm offered the following accommodations (among others) to facilitate the timely production of documents:

- a) We offered, entirely at our expense, to travel to the local office where the documents were located and review/copy the documents on site, and
- b) We offered, entirely at our expense, to travel to Washington, D.C. to the offices of the FBOP to review/copy any responsive documents.

Initially, Ms. Gowins indicated that the responsive documents at the local office were being collected and transmitted to Washington D.C. Later, Ms. Gowins stated that the documents would remain in Washington D.C. until the FOIA/PA section chief approved an initial response/cost estimate letter and the estimated costs were paid. We repeatedly requested via telephone such

¹ We do not have records of each time Ms. Rothwell called the FBOP FOIA/PA office, but we can confirm at a minimum calls we made on the following dates: a) 9/7/07, b) every working day between 9/12/07 and 9/21/07, c) 10/2/07, d) 10/9/07, e) 10/10/07, f) 10/18/07, g) 11/2/07, h) 12/12/07, i) 12/18/07, j) 12/19/07, k) 1/9/08 l) 1/16/08, and m) 1/22/08. Additionally, I was personally involved with a few of the phone conferences on these dates.

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Office of Information and Privacy
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Page 3

initial response and we were told on numerous occasions that such initial response would be forthcoming.

More than 3½ months after our FOIA request was transmitted, the FBOP finally transmitted its initial response. In a letter from the FBOP dated November 19, 2007 (and received by our office on November 26, 2007), the FBOP estimated it had approximately 9,000 pages of documents responsive to our FOIA request. The FBOP requested prepayment of estimated duplication costs and costs for staff review of documents. A copy of this letter is attached as Exhibit B. After receipt of this initial response, we again spoke with Ms. Gowins, questioning the 150 hour estimated time for staff review for release of the 9,000 construction documents (which constitutes 1 minute to review each page of the 9,000 documents).

When the FBOP would not budge from their initial estimate of costs for duplication and review of the responsive documents, we limited our initial FOIA request and transmitted a check in the full amount requested by the FBOP. A copy of December 27, 2007 letter limiting the document request to only 5 categories and enclosing payment is attached as Exhibit C.

After transmission of the December 27, 2007, we again followed up with Ms. Gowins to determine an approximate date for receipt of the FOIA documents. Ms. Gowins, however, refused to provide any estimate of a document production date. In fact, contrary to previous discussions, the FBOP had not ordered the documents transported from the local office to Washington D.C. until January 8, 2007. Ms. Gowins indicated that the FBOP needed time to transport the Project files from the local office and the FBOP would need addition time for review to see if the documents comply with the request. Furthermore, Ms. Gowins indicated that the review would be performed by her personally at a rate of 0-2 hours per workday, depending on her availability. At this point, we are unclear regarding the true location and status of the responsive documents.

From August 7, 2007 to today, the FBOP has not made a good faith effort to make the requested documents available for our office. We recognize that some time is required to collect and produce 9,000 pages of documents, but that time is substantially less than the six months that have passed without a single document being made available. Moreover, each time we call, we are assured that the FBOP is moving promptly to fulfill our request, yet when we follow-up we learn that FBOP has taken no steps to comply with the FOIA.

CONCLUSION

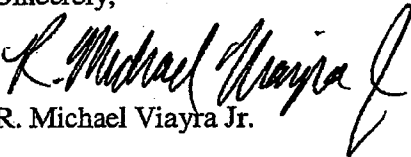
Nearly six months have elapsed since we first requested construction documents subject to release under FOIA from the FBOP; we paid the requested \$5,100 fee and made reasonable offers to minimize any burden on the FBOP in responding to our request yet to date we have not received a single document or any estimate of when we will receive any documents.

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Page 4

Therefore, please advise us in writing within 20 days of receipt of this letter of your decision regarding our FOIA request for release of FBOP documents. We anticipate that you will promptly resolve this failure by the FBOP to comply with the FOIA and trust we can avoid needing intervention of the federal district court to resolve this issue. We remain ready to travel to any location or make any reasonable accommodation to immediately review/copy all documents responsive to our FOIA request. Please feel free to contact me directly at (310) 552-5082 if you wish to discuss this matter further or need any additional information.

Sincerely,



R. Michael Viayra Jr.

RMV/cwb
Enclosures
LA-222777 v1

EXHIBIT A

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August 7, 2007

R. Michael Viayra Jr.
D 310.552.5082
F 310.552.5001
michael.viayra@klgates.com

VIA FACSIMILE (202-307-0828) AND U.S. MAIL

Chief, FOIA/PA Section
FOIA/Privacy Act Requests
Federal Bureau of Prisons
Department of Justice
Room 841, HOLC Building
320 First Street, N.W.
Washington, DC 20534

Re: ***FOIA Request for Documents Related to FCI Terminal Island Sanitary Sewer and Storm Drain Replacement Project***

To Whom It May Concern:

Pursuant to the Freedom of Information Act ("FOIA") and in accordance with the Department of Justice Freedom of Information Act Reference Guide dated May 2006, I hereby request access to review and make copies of all documents in the custody, possession, and/or control of Federal Bureau of Prisons ("FBOP") that constitute, relate, or refer to the following FBOP construction project:

FCI Terminal Island Sanitary Sewer and Storm Drain Replacement Project (the "Project")
Contract # GS-10F-0013K
Task Order #DJBTRM4PZ230013
Contract Date: 8/10/2004 (Modifications 1-5 dated 7/7/2005)
General Contractor: Cal, Inc., a California corporation

Specifically, I request access to the FBOP's entire Project file, including but not limited to the following documents (whether in hardcopy or electronic form):

1. All indices or similar documents which refer or relate to the organization of documents in the FBOP's possession relating to the Project;
2. All indices or similar documents which refer or relate to the organization of documents the FBOP created for or received from any person or entity relating to the Project;

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Chief, FOIA/PA Section
August 7, 2007
Page 2

3. All documents that constitute, refer or relate to the FBOP's contract with Cal, Inc. or any person or entity contracted to perform work on or materials for the Project, including all modifications, revisions, cancellations and change orders thereto;
4. All documents referring or relating to the Project that Cal, Inc. or any person or entity provided to the FBOP prior to the commencement of any work on or providing goods for the Project;
5. All documents that any person or entity provided to the FBOP that refer or relate to the Project;
6. All documents that the FBOP provided to any person or entity that refer or relate to the Project;
7. All documents that constitute, refer or relate to any payment by the FBOP for work on or materials provided for the Project;
8. All documents that constitute, refer or relate to the invoice or billing to the FBOP from any person or entity for work on or materials provided for the Project;
9. All documents prepared by the FBOP for any person or entity that relates or refers to the Project;
10. All documents prepared by any person or entity for the FBOP that relates or refers to the Project;
11. All correspondence, emails, notes, or similar communications between the FBOP and Cal, Inc. that relates or refers to the Project;
12. All correspondence, emails, notes, or similar communications between the FBOP and any person or entity that relates or refers to the Project;
13. All internal or interoffice memoranda prepared by the FBOP that relate or refer to the Project;
14. All notes, diaries, logs or journals prepared by the FBOP or any other person or entity that refer or relate to the Project, including, but not limited to meeting notes, notes of telephone conversations, and handwritten memoranda;
15. All reports, summaries or other periodic or final memoranda prepared by any person or entity which relate or refer to the Project;

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Chief, FOIA/PA Section

August 7, 2007

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16. All documents that refer or relate to any meetings held in connection with the Project, including, but not limited to, all internal FBOP meetings and all meetings with Cal, Inc;
17. Any and all plans, drawings and specifications that relate or refer to the Project;
18. All documents that discuss, analyze, summarize, detail, compile, refer or relate to any errors or omissions by Cal, Inc. or any contractor, subcontractor, or material supplier on the Project;
19. All documents that discuss, analyze, summarize, detail, compile, refer or relate to the decision by the FBOP to delete any work or materials from the Project;
20. All documents that discuss, analyze, summarize, detail, compile, refer or relate to the FBOP's determination of closeout costs and settlement of any and all claims arising from or related to the Project; and
21. All documents that constitute the FBOP's Project file for the Project.

Please contact me directly at (310) 552-5082 if you need any further details regarding this request or to discuss any logistics involved with the review and copying of such documents.

Sincerely,



R. Michael Viayra Jr.

*** TX REPORT ***

TRANSMISSION OK

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CONNECTION TEL 2#254#12023070828
CONNECTION ID
ST. TIME 08/07 18:27
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F 310.552.5001

FAX

Date • August 7, 2007

Pages • 4 (including cover)

Time •

Transmit To • Chief, FOIA/PA Section

Company/Firm • FOIA/Privacy Act Requests
Federal Bureau of Prisons
Department of Justice

Telephone No. • (202) 514-6655

Fax No. • (202) 307-0828

From • R. Michael Viayra Jr.

Phone • 310.552.5082

Secretary • Cindy Bishara

Phone • 310-552-5085

Lawyer ID • 10211

Client/Matter Name •

Client ID/Matter No. • 1006015/00701

COMMENTS:

EXHIBIT B



U.S. Department of Justice

Federal Bureau of Prisons

RECEIVED
NOV 20 2007

BY: _____

NOV 19 2007

REC'D
NOV 27 2007

ATTN: FOI/PRIVACY OFFICE

By _____
Washington, DC 20534

K&L Gates
10100 Santa Monica Blvd
Seventh Floor
Los Angeles, CA 90067
Attn: Michael Viayra

For Further Inquiry Contact:
Federal Bureau of Prisons
320 First Street, N W
Room 841, HOLC Building
Washington, D.C. 205340

Re: Request no. 2007-09057

Dear Mr. Viayra:

This is in response to your Freedom of Information Act request for records related to FCI Terminal Island Sanitary Sewer and Storm Drain Replacement Project, Contract #GS-10F-0013K. Specifically, you sought the following:

- 1) "All indices or similar documents which refer or relate to the organization of documents in the FBOPs possession relating to the Project;"
- 2) "All indices or similar documents which refer or relate to the organization of documents the FBOP created for or received from any person or entity relating to the project;"
- 3) "All documents that constitute, refer or relate to the FBOP's contract with Cal, Inc. Or any person or entity contracted to perform work on or materials for the Project, including all modification, revisions, cancellations and change orders thereto;"
- 4) "All documents referring or relating to the Project that Cal, Inc. or any person or entity provided to the FBOP prior to the commencement of any work on or providing goods for the Project;"
- 5) "All documents that any person or entity provided to the FBOP that refer or relate to the project;"
- 6) "All documents that the FBOP provided to any person or entity that refer or relate to the Project;"
- 7) "All documents that constitute, refer or relate to any payment by the FBOP for work on or materials provided for the Project;"

8) "All documents that constitute, refer or relate to the invoice or billing to the FBOP from any person or entity for work on or materials provided for the Project;"

9) "All documents prepared by the FBOP for any person or entity that relates or refers to the Project;"

10) "All documents prepared by any person or entity for the FBOP that relates or refers to the Project;"

11) "All correspondence, emails, notes, or similar communications between the FBOP and Cal, Inc. That relates or refers to the Project;"

12) "All correspondence, emails, notes, or similar communications between the FBOP and any person or entity that relates or refers to the Project;"

13) "All internal or interoffice memoranda, prepared by the FBOP that relate or refer to the Project;"

14) "All notes, diaries, logs or journals prepared by the FBOP or any other person or entity that refer or relate to the Project, including, but not limited to meeting notes, notes of telephone conversations, and handwritten memoranda;"

15) "All reports, summaries or other periodic or final memoranda prepared by any person or entity which relate or refer to the Project;"

16) "All documents that refer or relate to any meetings held in connection with the Project, including , but not limited to, all internal FBOP meetings and all meetings with Cal, Inc;"

17) "Any and all plans, drawings and specifications that relate or refer to the Project;"

18) "All documents that discuss, analyze, summarize, detail, compile, refer or relate to any error or omissions by Cal, Inc. Or any contractor, subcontractor, or material supplier on the Project;"

19) "All documents that discuss, analyze, summarize, detail, compile, refer or relate to the decision by the FBOP to delete any work or materials from the Project;"

20) "All documents that discuss, analyze, summarize, detail, compile, refer or relate to the FBOP's determination of closeout costs and settlement of any and all claims arising from or related to the Project; and"

21) "All documents that constitute the FBOP's Project file for the Project."

It has been estimated your request will involve the duplication of nine thousand (9000) pages of documents. In accordance with 28 C.F.R. §16.11, the duplication fee for this request will be \$900.00 (.10 cents per page after the first 100, which will be provided free of charge).

It has been estimated that it will take 150 hours for staff to review these documents for release. In accordance with 28 C.F.R. §16.11(c)(3), the cost for staff time involved in the review of the documents is estimated at \$4200.00.

No documents have been reviewed by this office. Therefore, we are unable to give an exact count of releasable documents; however, any fee adjustments will be made accordingly.

In accordance with 28 C.F.R. §16.11(i)(2), we can require advance payment of fees in excess of \$250.00. Therefore, should you require this office to proceed with your request, please submit a check or money order, payable to the **Treasury of the United States**, in amount of \$5100.00 within 30 days to this office at the above address so that we may begin retrieval and review of these records.

Should you wish to narrow the scope of your request to reduce the cost, within the 30-day time frame you can forward the modification to the above address.

Sincerely,

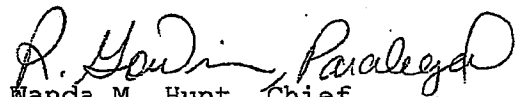

Wanda M. Hunt, Chief
FOIA/PA Section 80

EXHIBIT C

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December 27, 2007

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VIA FEDEX

Ms. Wanda Hunt, Chief, FOIA/PA Section
Federal Bureau of Prisons
320 First Street, N.W.
Room 841, HOLC Building
Washington, DC 20534

Re: ***FOIA Request for Documents Related to FCI Terminal Island Sanitary Sewer and Storm Drain Replacement Project- Request No. 2007-09057***

Dear Ms. Hunt:

In response to your letter dated November 19, 2007, please find enclosed a check for \$5,100 payable to the U.S. Treasury as a deposit to cover duplication and staff review of documents for release in connection with our previous FOIA request.

To reduce the initial workload on your staff and facilitate a timely production of the most important documents, we request that the Federal Bureau of Prisons produce as soon as possible the following five categories of documents¹:

3. All documents that constitute, refer or relate to the FBOP's contract with Cal, Inc. or any person or entity contracted to perform work on or materials for the Project, including all modifications, revisions, cancellations and change orders thereto;
11. All correspondence, emails, notes, or similar communications between the FBOP and Cal, Inc. that relates or refers to the Project;
13. All internal or interoffice memoranda prepared by the FBOP that relate or refer to the Project;
14. All notes, diaries, logs or journals prepared by the FBOP or any other person or entity that refer or relate to the Project, including, but not limited to meeting notes, notes of telephone conversations, and handwritten memoranda;

¹ The numbers of the document requests correspond to the original document request numbers found in our August 7, 2007 letter as well as the numbers used in your November 19, 2007 letter.

K&L|GATES

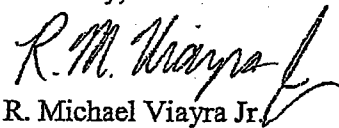
Chief, FOIA/PA Section
December 27, 2007
Page 2

16. All documents that refer or relate to any meetings held in connection with the Project, including, but not limited to, all internal FBOP meetings and all meetings with Cal, Inc.

We believe this more limited scope will provide the information we need; however, we will not be able to confirm whether we need other categories of documents until we receive these five particular categories of documents from the Federal Bureau of Prisons. We, therefore, request the timely production of these five categories of documents and reserve the right to request any or all of the other categories after our review this document production.

Please advise as soon as possible when the Federal Bureau of Prisons intends to produce these five categories of documents. You may contact me directly at (310) 552-5082 or contact Angelina Rothwell at (310) 552-5073 if there is anything we can do to help expedite your fulfillment of this request.

Sincerely,


R. Michael Viayra Jr.

enclosure
LA-216743 v1

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

GENERAL ACCOUNT

10100 Santa Monica Boulevard

Seventh Floor

Los Angeles, CA 90067

MELLON BANK

Mellon Bank, N.A.

Pittsburgh, PA

10005561

PAY
TO THE
ORDER OF

DATE

12/27/2007

60-160
433

Treasury of the United States

\$ 5,100.00*****

FIVE THOUSAND ONE HUNDRED AND 00/100

DOLLARS

Treasury of the United States

NOT VALID AFTER 180 DAYS

Two Signatures Required If Over \$250

Kara Dangle
AUTHORIZED SIGNATURE

MEMO

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈ 10005561 ⑈ ⑆ 043301601 ⑆ 126 8682 ⑈

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP

Date: 12/27/2007 Payee: Treasury of the United States

Vendor #: 18120

Check #: 10005561

REF. #	INVOICE	INV. DATE	INV. AMOUNT	COMMENTS	AMT. PAID
974610	122707TP	12/27/2007	5,100.00	12/27/07 - Reference: FBOP Request No. 2007-09057 - T. Pierce.	5,100.00

5,100.00

EXHIBIT 2



U.S. Department of Justice

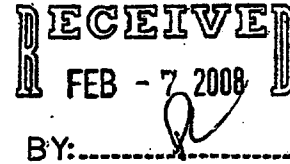
Office of Information and Privacy

Telephone: (202) 514-3642

Washington, D.C. 20530

FEB 01 2008

Mr. R. Michael Viayra, Jr.
Kirkpatrick & Lockhart Preston Gates Ellis LLP
Seventh Floor
10100 Santa Monica Boulevard
Los Angeles, CA 90067



Re: Request No. 2007-09057

Dear Mr. Viayra:

This is to advise you that your administrative appeal from the action of the Federal Bureau of Prisons was received by this Office on January 29, 2008.

The Office of Information and Privacy, which has the responsibility of adjudicating such appeals, has a substantial backlog of pending appeals received prior to yours. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number 08-0897. Please mention this number in any future correspondence to this Office regarding this matter.

We will notify you of the decision on your appeal as soon as we can. We regret the necessity of this delay and appreciate your continued patience.

Sincerely,

Priscilla Jones
Supervisory Administrative Specialist

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge George H. Wu and the assigned discovery Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

CV08- 1518 GW (FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

COPY

Timothy L. Pierce, Bar No. 141170
 R. Michael Viayra, Jr. Bar No. 236066
 KIRKPATRICK & LOCKHART PRESTON GATES LLP
 10100 Santa Monica Blvd., 7th Floor
 Los Angeles, California 90067
 310-552-5000

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

MIRAMAR CONSTRUCTION, INC., a
 California corporation,

Plaintiff(s)

v.

UNITED STATES DEPARTMENT OF JUSTICE and
 MICHAEL B. MUKASEY, in his official
 capacity as Attorney General

Defendant(s)

CASE NUMBER:

CV08-01518 GW (FFMx)

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney

Timothy L. Pierce, R. Michael Viayra, Jr., Eric A. Bevan, whose address is:

Kirkpatrick & Lockhart Preston Gates Ellis LLP
 10100 Santa Monica Blvd., 7th Floor
 Los Angeles, California 90067

an answer to the ☒ complaint ☐ _____ amended complaint ☐ counterclaim ☐ cross-
 claim which is herewith served upon you within 60 days after service of this Summons upon you, exclusive
 of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded
 in the complaint.

CLERK, U.S. DISTRICT COURT

Date: **MAR - 4 2008**

By: _____

NATALIE LONGORIA

Deputy Clerk

(Seal of the Court)



1198

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**I (a) PLAINTIFFS** (Check box if you are representing yourself ☐)

MIRAMAR CONSTRUCTION, INC., a California corporation,

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

DEFENDANTS:UNITED STATES DEPARTMENT OF JUSTICE and
MICHAEL B. MUKASEY, in his official
capacity as Attorney General,

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Timothy L. Pierce
R. Michael Viayra, Jr.
KIRKPATRICK & LOCKHART PRESTON GATES
10100 Santa Monica Blvd., 7th Floor
Los Angeles, California 90067
310-552-5000

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only

(Place an X in one box for plaintiff and one for defendant.)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☐ No (Check 'Yes' only if demanded in complaint.)**CLASS ACTION under F.R.C.P. 23:** ☐ Yes ☐ No**MONEY DEMANDED IN COMPLAINT: \$** _____**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

5 U.S.C. section 552 - complaint for injunctive relief under FOIA

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 OVERSIGHT <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER/PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FOREIGNURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litig. <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☐ No ☒ YesIf yes, list case number(s): 2:07-CV-06471-GAF (agr)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which EACH named plaintiff resides (Use an additional sheet if necessary)

☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.

Los Angeles County

List the California County, or State if other than California, in which EACH named defendant resides. (Use an additional sheet if necessary).

☒ Check here if the U.S. government, its agencies or employees is a named defendant.

List the California County, or State if other than California, in which EACH claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

Los Angeles County

X. SIGNATURE OF ATTORNEY (OR PRO PER):


R. Michael Viayra, Jr.Date March 4, 2008

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))